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## MOTION PICTURES.

INFLUENCE—BENEFITS—EVILS—CENSORSHIP.

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A LECTURE DELIVERED BY EDW. V. P. SCHNEIDERHAHN  
at the University Extension Course of Lectures, St. Louis  
University, St. Louis, Mo., March 6, 1917.

Lecture delivered from notes, taken down in shorthand, transcribed, revised, extended and published for the benefit of students of the question. With Addenda.

**DEDICATED TO THE MEMORY OF MY MOTHER.**

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UNIVERSITY OF ALABAMA

## MOTION PICTURES.

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### INFLUENCE-BENEFITS-EVILS-CENSORSHIP.

REVEREND RECTOR, REVEREND FATHERS,  
LADIES AND GENTLEMEN:

In the discussion of the subject of this evening's lecture: "Motion Pictures, Influence-Benefits-Evils-Censorship," I will submit some unquestionable facts. Let each one of the audience then determine for his own sphere how to advance the benefits derivable from motion pictures, and how to use every influence toward the elimination of the evils. The seriousness of this question came to me in a very clear way, when some years ago I was a member of the St. Louis City Council. I was forced to conclude from the examination which I then made, that it was the duty of the legislator to protect the people, and especially the children and the youth of the land, against the pernicious influence of vile and filthy motion pictures.

Formerly I had the same prejudice, as most of my colleagues in the law too often have, against legal censorship. But after a careful consideration of the facts as they exist and of the developments of the motion picture business, my conclusion is:

There is no effective remedy to exclude the evils from the motion picture business except impartial

pre-publicity inspection, and this means legal censorship.

From the invention of the motion picture more serious consequences have probably followed, so far as the body social is concerned, than from any other invention in the last thirty years. In slight part, there is some similarity between the results which have followed the phonograph invention, and the results which have followed the motion picture invention. I am not speaking scientifically. I am merely trying to use a plain comparison. The phonograph fixes on a moving plane, the vibrations resultant of sound, and by a reverse contrivance reconverts those vibrations back again into the same sound. The motion picture industry, by means of the motion picture camera, undertakes to catch and fix a vast number of successive instantaneous pictures of a scene or of an action, and then by means of the vitascope, biograph, or veriscope, and by other like contrivances known by different names, to reel off the ribbon containing that vast series of developed instantaneous pictures in such manner, that with the aid of a powerful magnifying lens and a strong electric light, these various successive pictures are cast upon a screen so as to reproduce the living action that has been so photographed. In the case of the phonograph, we may say, you can have the music without the orchestra. In a motion picture you have the play without the players.

Because of the extent of the subject, I find myself compelled on examination of the data at hand to give but a very brief outline to the first part of the lecture respecting Influence and Benefits.

## INFLUENCE.

Some years ago, we often read of young ladies and gentlemen who sought the footlights. They were won in part by the prospects of traveling over the country from town to town, in the various shows. Now, one result of the motion picture development of today has been, that excepting the large towns, the so-called metropolitan centers, the traveling show is almost altogether a matter of the past. It may be said that the theater no longer exists in the smaller towns. Playwriting too, is practically a thing of the past. At the present time we frequently find, not only in the newspapers but in other advertising media interested in the motion picture industry, prizes offered, \$1,000.00 or \$10,000.00, for some motion picture story. The story may then be transcribed into jerky sentences by some bright light in the motion picture industry. A motion picture serial of some fifty-seven odd successive incidents, exploits of somebody, to keep up the interest, is the result. The story may be elongated for publication in the newspapers with or without pay, I do not know, and is supposed to excite and induce the reader into seeing all the serials of the 57 varieties of exploits, or whatever the case might be, in the various motion picture houses.

Neither is there any question that the motion picture has had a great influence in withdrawing many from the saloon. And it has had a great influence in the development of a neighborhood spirit. It has had a great influence in making amusement simpler, in making it less costly, in making it less of an adventure than formerly. To the neighborhood theatre



the entire family may go, without passing through a preparation or parade of dress or other excitement. The family may go to the motion picture show and be back in about two hours, and it has had recreation at comparatively little expense. This is no slight circumstance, ladies and gentlemen, in our nervous country, where there is but little of quiet amusement. The pioneer of the censorship movement in St. Louis, I have always claimed, and I still claim, that the influence and the benefits of the motion picture industry of the character briefly described, are so many, as to justify every endeavor to keep the pictures clean.

There is no doubt that the motion picture industry up to the present day has developed almost entirely into an industry to furnish entertainment. Yet it is the only cultural influence for millions of persons. And, ladies and gentlemen, so important is this consideration, that it is true to say, that we have today in this country two educational systems. The schools are one educational system, and the motion picture shows are the other educational system. The influence upon a person of seeing how others act can not be overestimated. The motion picture presents action which is a ready subject and school of imitation. A moment's reflection will show to any one of a fair and unbiased mind that this is true. These educational systems run parallel. Now, I find that in the public school system of the City of St. Louis there was spent for the fiscal year ending June 30, 1916, the sum of \$4,379,246.06. The amount spent for Catholic and other schools and the amount spent in the private colleges and in the two universities in the City of St. Louis, undoubtedly constitutes a vast amount in addition. Therefore, it certainly is a remarkable circum-

stance that where so much money is raised by taxation for the public school system alone, and where vast sums in addition are spent by private endeavor for education, not one penny is spent by the Government in the supervision of what has become a most powerful rival educational system.

The motion picture has a sociological influence. It aids in the formation of ideals, good or bad, of character, good or evil. If we reflect on that a moment, ladies and gentlemen, we will find, that we can not overestimate the importance of that truth, and as we go on we will find proof from other sources. As has been asserted by others, the motion picture show for many persons is society, school and church. ✓

### **BENEFITS.**

I have alluded to positive benefits in the part I have just concluded. Many of the benefits of the motion picture development are patent. Yet a moment's reflection will prove the fact, that the educational value and the scientific uses have been neglected, when compared with the amusement objects. All of the lessons of geography, many, if not most, of the lessons in physics and science, might be more adequately, much more impressively, and much more understandingly taught, if they were taught with the help of motion pictures. That field has hardly been attacked, and for the reason, that when the invention first became known, it was rather seized upon as offering possibilities for easy entertainment, and therefore for large profits. The field of history, geography, literature, science and industry, and all their many ramifications, with all their surprising lessons, has scarcely been touched to this very day.

Imagine, if you will, the immense sociological value of a foundation of several million dollars, let us say, employed in taking motion pictures along scientific lines to be preserved for future ages. In the field of science, and in the field of industrial development, the finding and fixing and recording the present, by means of records held in the motion pictures and preserved in museums for the benefit of the researchers of future ages, might produce astoundingly valuable results. This thought is becoming impressed upon those especially who have duties fixed upon them by law, to exclude the evil from the motion pictures. The more they were obliged by law to exclude evils, the more they found the possibility of benefits. Allow me to read an extract taken from a report of the Censorship Board of Pennsylvania.

The Censorship Board of Pennsylvania, in its 1916 Report, makes the following recommendation (page 5):

“We respectfully suggest to your Excellency (the Governor of Pennsylvania) that an effort be made to enact legislation whereby motion pictures might play the part they really deserve in the scheme of education. It is a well-known fact that scenes depicted upon the screen are permanently fixed in the minds of children. Certain branches of studies could be fittingly arranged and graphically portrayed, which could produce results well worth the effort.”

Further, I desire to call particular attention to an excellent article on “Motion Pictures as an Aid to Education”, by Alfred H. Saunders. My time does not permit me to quote extensively and it would be



difficult to make a selection. This splendid article will be found in the Report of the Commissioner of Education of the United States (Vol. I, 1913 Report, pp. 587-597).

I am glad to note that some of the exchanges and producers are beginning to see the advantage of formulating educational catalogs. For lack of time, I am compelled to leave this part of the subject, on which I had intended to dwell at greater length.

The subject of this evening's discussion is so broad, and the development of the motion picture industry is so manifold, that I must admit that I have not done justice to the first two parts of this evening's lecture. But because of limited time I may be excused for passing from those two points to the next points of the evening's lecture—Evils and Censorship.

I believe it essential to prove, and not merely to allege, the existence of evils in the field of the motion picture industry.

I believe it essential to prove, that the so-called National Board of Censorship, now called the National Board of Review, is a purely voluntary organization, organized and supported by producers of the films, and that it can not perform the work which is claimed for it.

I believe it essential to show, that there exists no legal objection to the only remedy which can be applied to secure the elimination of the evil, and that this is legal censorship.

I believe it essential to prove, that legal censorship is effective.

I must then prove, first, that there is evil in the field.

### EVILS.

For many years I have been engaged in the study of this question, with which I first became familiar while a member of the City Council.

If we were today to take an average of the motion pictures, and fix the fact of the character of the average, by an unbiased commission, we shall find that the average motion picture seems to proceed upon the theory, that marriage is at most rather a temporary affair, and that divorce is a ready remedy. Most business men, according to the average motion picture, during the day are quick, alert and nimble after the almighty dollar, but when evening comes, they are frequenters of the cabaret and other so-called high-class places of entertainments, where more or less indecent dances are of frequent occurrence. Incidents of ravishment, white slavery and other scenes, which I will not insult you with relating, are matters of frequent occurrence, so much so as to be almost customary in the films. If the average were fixed as stated, and two hundred years afterwards the films were to be found unchanged, the conclusion would be, if the films were a correct representation of life, that the men of our time had hardly anything to do, except to run away with other men's wives, and, conversely; that divorce, as stated, was a ready patent sure remedy for every family difficulty; that indecent dances are quite a common entertainment; and that the fathers and mothers of this day and age, care very little how their children are raised; that most of them are raised in a manner

that there can be no thought of character instruction; in short, that the fathers and mothers of our age are willing to turn over to the motion picture show the opportunity of teaching the child how "life is lived and to be lived". But such an average does not portray life as we know it. The trouble is, that the average motion picture acts on a plane entirely too low. I am stating the simple facts. Yet it is fair to say, that a few of the showhouses aim to be very careful in their selections. But the average of the pictures will be found as stated.

Certain it is, that until the motion picture came into the field, we did not have the so-called "white slave" plays. Now there is a "craze" to coin money from this filth, on the alleged ground of imparting instruction. Exploiters would not have dared to present in the theater the so-called white slave play, which frequently is only a presentation of the inside operation of dens of vice. But the motion picture seized upon that opportunity for sensationalization, and, ladies and gentlemen, it can not be denied by any of you here, that after the motion picture seized upon this field in the way described, perhaps millions of young men and women, by means of the motion pictures, have been taken into dens of vice which they never would have seen under any circumstances that are conceivable. And it is not true, that you teach purity by showing impurity. It is not true, that you make boys and girls pure by unloading into their minds the filthy accumulation of these dens of vice "as a warning". Time does not permit me to cite from the many books and records and hearings and testimony that I have at hand, the proof by officers of juvenile courts, of wardens of penitentiaries, of

police officials, and of scholars who have made a special sociological study of the influences of that character of picture. Yet we have these pictures run all the time in places where there is no legal censorship.

In the Congressional hearings, some producers have had the assurance to claim, that though the industry has been progressing now these many years, only one or two, or a very few films at most, had been referred to as indecent in the evidence before the Congressional Committee that had in charge the Federal Motion Picture Bill. That is directly in the teeth of the evidence before the committee itself. We will see, later on, what the actual facts are.

From February, 1916, to December, 1916, there were entered into the tabulations of the Committee on Public Morals and Relations of the St. Louis Branch of the American Federation of Catholic Societies, no less than 1,251 objectionable films with detailed information obtained through the Pennsylvania and Ohio Boards of Censors and from local report and information. These films—thus tabulated by said committee, let it be clearly understood—only included such films as were objectionable because of indecency, or improper suggestiveness. I do not wish any one to believe that this tabulation is due to a false standard. An examination of the records will clearly justify the criticism made of the films. We all admit that there is a line of division between the undoubtedly decent and the undoubtedly indecent, and that our opinions may divide and be in doubt where the line of division is not clear. Yet certainly there can be no doubt that films which parade naked women, that films which parade pro-

longed ravishment scenes—I must speak plainly—that films which present scenes of indecent dances, or immodest bathing beach or posing scenes, or so-called fairy stories which have but one real object, that films which present scenes which show the inside workings and operation of dens of vice and crime, are just as indecent and just as improper and just as much to be condemned, as if the same scenes were to be portrayed by living actors right upon the stage.

At the same time, it must be remembered, that films when presented to the censors in those states where state censorship exists, may not contain all of the scenes contained in the original film. We have actual proof that films which are objectionable have been presented to the censors in deleted fashion, and the information which is then forwarded to persons in other states is not complete, as it does not show what was originally in the film, but simply shows what objection the censors made of the film as the film was presented to them for the showing in the particular state of the censors. The copies of the film presented in other states where there is no censorship may contain scenes never presented to the censors of the first named state where there is censorship.

The above committee now has a tabulation of 1,949 films wholly or partially objectionable and some reports are not yet entered. The objections deal only with films that are indecent, suggestive or immoral and the objections are genuine and well founded, as an examination of the tabulations themselves will show.

Now, let us see about the admission of those who are in the producing field.



On behalf of the Paramount Pictures Corporation, The Famous Players Film Company, the Jesse L. Lasky Feature Play Company, the World Film Corporation and the Equitable Motion Picture Corporation, a petition was filed with the Committee on Education of the House of Representatives having in charge the Federal Motion Picture Commission bill, dated January 25, 1916, the significant parts of which are as follows:

“While the idea of censorship of motion pictures is distasteful to our clients, as well as to others in the business, our support of the principle of regulation embodied in the bill before you is due to our realization of unfavorable conditions in the industry which can not be corrected by ordinary means nor by sporadic and occasional criminal prosecutions, procured by the better elements of the business or by individual or organized reformers. The motion picture business, now of vast financial importance, has had a mushroom growth and is not yet homogeneous and standardized. Too many persons engaged in the business look upon it as a temporary means of getting money instead of a permanent business, the continued profit of which is dependent upon the quality and character of the productions. They are like miners who quickly exhaust the high-grade ore and leave the low grade on the dump. They are get-rich-quick artists looking for a quick clean-up and get-away. They find the opportunity for such methods in producing and exhibiting sensational productions which display scenes of lust and crime. \* \* \* This state of affairs constitutes a temptation hard to resist, and, in fact, the production of vicious pictures is constantly increasing just because they

are more profitable. If the industry is to endure, if decent people are to stay in the business, this cancer must be cut out. A Federal regulatory commission should prove a fearless surgeon, and we, therefore, favor such a commission."

See "Briefs and Statements" filed with the Committee on Education, House of Representatives, Washington, D. C., 1916, on Federal Motion Picture Commission, p. 3.

I have already referred to the white slave film, but it may be well to have the testimony of the New York Society for the Prevention of Crime as laid down in its report of 1916, page 50:

"Commercial or radical advocates of sex 'education' have, through publication and the 'movies', emptied the cesspools of prostitution and 'white slavery' into the minds of the boys and girls of our city. Young girls have the notion that they are immune from deception. But they as suddenly fall prey to the libertine and procurer, because they are no less susceptible than before to attention and apparent devotion."

And at page 61 of the same report:

"Because of the tremendous power of motion pictures for good as well as for evil, and because of the conviction that an ounce of prevention is worth a pound of cure, this society has favored official or governmental supervision of motion pictures before public exhibition. Our efforts in this connection are described later."

As to the character of the films, it may be well to have the testimony of the Pennsylvania Board of Cen-

sors taken from their report June 1, 1915, to December 1, 1915. It is as follows, at page 6 of that report:

“The demand for plots and themes, for new situations and for new scenes is so tremendous that the makers are willing to go to the greatest lengths to find material for their pictures. When those who are entrusted with the work of censorship in Pennsylvania, Ohio, Chicago and other parts of the country are asked if the pictures are improving in character, they are constrained to say that this is not the case. The character of the American output seems not to be better, while there is an increasing disposition on the part of the manufacturers to object to the advisory oversight of boards established to interpret and express the moral sense of the community. In order that they may go to the people with an immoral and degrading story, they let it be known that they are showing us that ‘the wages of sin is death’; that there is retribution in the world for evildoers; that they are sociologists making excursions for good ends into the underworld; that they are betraying and seducing girls to teach some fine lessons. Such devices will fail to convince the public that the moving picture stands in any necessary relation with the agencies of good order so long as it takes a course well explored by the writer of the old dime novel and the melodrama, and almost wholly neglects a field in which with travel and other educational pictures it could make itself so valuable and influential in directing public feeling and thought.”

“We believe as a result of observation that at least 75 per cent of the pictures which are manufactured in this country are plainly melodrama or are so influenced by the melodrama as to be assigned, properly, to this general class. At least

20 per cent of the remainder are comedies, for the most part of a coarseness unknown at any times in the history of the American theater upon the cheapest variety stage. The melodrama is distinguished for its lurid delineation of one or another kind of crime. The habitual visitor of the moving picture house, therefore, lives in a world in which women are betrayed; men and women murder other men and women or kill themselves; fight follows fight; until every standard of conduct of the beholder is in the most imminent danger of debasement. Probably few persons have the acquaintance of women who keep revolvers in their bedroom table drawers or go abroad with guns concealed in their blouses, ready at a moment's notice to kill themselves or others. Men do not strike and knock down, wrestle and choke, shoot and kill each other in the well-appointed homes of America; yet in every picture under this present melodramatic influence such scenes occur. Lust, hate, vengeance and every variety of villainy are portrayed, until they seem to be a part of all men's daily experience."

And at page 8:

"That pictures may and do constantly suggest crime there is abundant testimony to prove. Warden McKenty, of the Eastern Penitentiary, recently said:

" 'Many of the convicts in this penitentiary are confined here because of criminally suggestive motion pictures. That isn't any theory of my own. My men come to me and tell me that, and I believe it. Three men serving life sentences blamed their fall on pictures. They told me this only a few days ago. That is my answer to those who oppose strict censorship for the movies.' "

And again at page 8:

“As for the comedies of the ‘screen’, their lewdness and vulgarity cause them to be under constant observation. Altogether new standards of humor have been set up in a few years by the motion picture manufacturers. That they are for the better, no man of them would dare to say. There is scarcely a picture in several series which might be named and which are ranked among the leaders for popularity and sale, that does not fundamentally rest upon the kicking of men by women, or women by men; rough usage of cripples; pounding men and women on the head with a mallet; throwing pies and eggs in their faces; ducking and drenching them in tubs, ponds, troughs or fountains; striking their abdomens and backs; taking off their clothes; oversetting them, and putting them in vulgar positions. The most careful and extensive cutting will leave a picture which is still objectionable to any right-thinking person, though it is accounted one of the natural rights of the manufacturers to present these comedies in the production of which so many persons have sunk their self-respect and endangered their lives and limbs.” \* \* \*

“The Board can not believe that the motion picture theater is a medium for teaching the youth of Pennsylvania moral lessons, through melodrama, which it could much better get through the old channels in the church or school, nor will it be turned from its way by appeals for freedom to lay bare or advertise the sordid relationships of life in the name of literature or the dramatic art. The history of the drama and of acting in drama are so familiar; the canons of good taste, to say nothing of the moral standards established for the guidance of



the human family, are so well established, that appeals to us by motion picture photographers to allow them to indulge their fancies for some vulgar whim, or, worse than this, in the hope of increasing their private gains, in the name of 'liberty of speech', can be permitted to fall on deaf ears."

And in an article on "The Movies—Censorship and the Ohio Referendum", by Chas. G. Williams of the Ohio Board of Censors, we have a summary of principles that should be readily agreed to as forming a basis for exclusion of the evil in the motion picture field. I quote the following part:

"However, it will be agreed by every intelligent and respectable citizen of the state that when a film or part of the same is manifestly within any of the following classes the right to exhibit it should be forever prohibited:

"Pictures of a sensuous nature which tend to excite sexual passions.

"Pictures intended to blaspheme the Deity and bring into disrepute the Christian religion.

"Pictures of a coarse, vulgar character containing scenes of suggestion.

"Pictures which unduly aggravate religious strife and hatred.

"Pictures assembled in such a manner that they become technical lessons in crime and immorality.

"Pictures which arouse race prejudice and are mob-inciting in their nature.

"Pictures containing scenes so ghastly and gruesome that they are dangerous for women and children to behold.

"Pictures that proclaim traitorous and anarchical doctrines and those intended to ridicule

the legally constituted authority of the nation and state.

“Pictures of every kind and character wherein the evil shown outweighs the moral of the story.”

In our own city we have had the testimony of Hon. Mayor Kiel in his message of April 22, 1915, as follows:

“I want to call your attention to the necessity of censoring moving picture films shown in St. Louis, so that we may rest assured that our children may safely attend these shows without being subjected to moral danger. While most of the films here shown are censored under the direction of the National Board of Censorship, it is necessary, I believe, that you appoint a committee and invest it with sufficient authority to inquire into conditions in St. Louis in a logical preparation for the passage of legislation regulating moving picture shows, both as to the character of the films shown and as to the physical condition of the buildings in which such pictures are exhibited. The moving picture theater is a school. If the films are good ones, it is a school for good; if the films are bad ones, it is a school for bad. Therefore, you should act promptly to protect the morals of the children who attend the same. \* \* \*”

A committee, of which the lecturer is chairman, has received petitions bearing 12,869 signatures of men and women of St. Louis asking for legal censorship on account of objectionable motion pictures.

St. Louis thus far has not adopted such a censorship ordinance.

## **CENSORSHIP.**

Having shown the existence of a rather prevalent evil in the "movies", we are now to consider what remedy, if any, can be applied to the situation, and whether, if applied, it will be effective. This will bring us to a discussion of censorship in general; it will cause us to examine into the operation of the so-called National Board of Censorship, now called National Board of Review; it will further cause us to consider the constitutional and legal points involved, and it will cause us to consider whether censorship, if legally established, will be effective. These four points will be considered separately. The first point we shall consider under the title of Censorship will be—

### **General Discussion of Censorship.**

If it is contrary to the public morals to have bull fights, naked men and women and ravishment scenes, indecent dances, objectionable bathing beach scenes, etc., in the "movies", then the people should certainly have the right to see to the application of some remedy so that these scenes can not be shown. This is pre-publicity prevention, or inspection or censorship—call it by whatever name you will. The opponents of censorship claim, that it is the privilege of a man to commit an offense, to be followed by the privilege of being tried for the commission of that offense. They claim that the motion picture and the press are in the same category, but we will see what the Supreme Court of the United States says about the matter.

In the case of the Mutual Film Corporation v. Industrial Commission of Ohio, 236 U. S. 230, the Supreme Court of the United States says:

“We would have to shut our eyes to the facts of the world to regard the prevention (censorship) unreasonable or the legislation to effect it a mere wanton interference with personal liberty. \* \* \* The judicial sense supporting the common sense of the country is against the contention.” \* \* \*

(The complete opinion will be found in the Adenda, p. 58. )

Of the opponents of censorship, some are in the motion picture business, some do not know the facts, or are indifferent to the facts, and are averse to any change, and claim that censorship will strangle the industry. Censorship will not strangle the motion picture industry any more than the Interstate Commerce Commission has strangled the railroads. Without the Interstate Commerce Commission the railroads could not have succeeded in getting rid of the evils that existed in the railroad business. It is said by some that censorship is wrong because you prevent the commission of an offense, and in this free country you must give a man the right to commit an offense, so that he may also have the right of being tried for the commission of that offense. But the Government can now go to a place of business where tomatoes or meats, etc., are sold, and inspect the goods and prevent the sale of tainted food, and yet this is nothing but censorship. **Inspection is censorship. Words do not count; the principle is the thing to be considered.** The fact that you inspect the picture beforehand, to see if it violates the law, is not different from the inspection of meat, to see if the meat is diseased meat, the sale of which would violate

the law. Would any one of us go back to the old system of chance, so that the seller may have the chance of being tried by a jury, to see whether he really did sell us diseased or tainted goods?

A Motion Picture Censorship law must of course permit an appeal from an adverse decision of the censors to the courts. But while the appeal is pending, the film can not be shown. This is practical efficacy in enforcing the laws against indecency.

Some producers also say that censorship would be a system whereby the few would determine what the many shall see. But, ladies and gentlemen, that is the very thing that many producers are stubbornly insisting on today, that **they shall determine what the people shall see, through their own self-constituted National Board of Censorship.** It is a strange situation, indeed, but you can not otherwise explain the readiness, and the particular emphasis and persistency of the officers of the National Board of Censorship, in fighting every endeavor on the part of the people to bring the motion picture industry under a reasonable legal control.

Frank L. Dyer, president of the General Film Company, in a debate on censorship, indicated as the position of the opponents of official censorship the following:

“We believe that it is not within the power of any man or body of men to tell us or our children what we shall or shall not see. We reserve that right to ourselves. We refuse to allow any one to lay down to us what shall be our code of morals or taste. We insist that we shall decide those questions ourselves. If our children go to theatres where improper pictures are shown, that



is our lookout and not the lookout of the state. If an improper or grossly immoral or licentious film be exhibited by any chance, the proprietor of the theatre and the producers of the film should be punished with the greatest severity. We say the situation is precisely the same as when a newspaper prints a libel. We can not prevent the paper from printing the libel, but we can hold the paper strictly accountable for doing so. We can not prevent a man from uttering scandal, but he can be arrested and prosecuted for doing so. We believe the American people are the proper censors of pictures. We do not believe that a theatre can exist at all unless it represent a respectable public sentiment. A theatre showing improper films will not be patronized except by those persons who always are seeking evil, and in that event the theatre owner will be punished and his theatre closed by the police power."

See Hearings before the Committee on Education, House of Representatives, 63rd Congress, 1914, No. 1, pp. 17-18.

When the question came up as to whether there was to be legal censorship or not in New York City, Mayor Gaynor of New York vetoed the censorship ordinance which had been passed by the New York Board of Aldermen by a vote of 70 to 1. There had been a tremendous outcry in New York against immoral pictures. Those who are interested in further details as to the reasoning of Mayor Gaynor can find them on page 172 of the hearings before the Committee on Education, House of Representatives, 1914, No. 2. But so far as I am concerned, all of Mayor Gaynor's reasoning goes to the same plane as his

statement made in the same message, that he personally knew that indecent and immoral pictures were not being shown. That statement was utterly preposterous. He tried to prove too much, and therefore proved nothing. His message was a bitter partisan harangue directed at those who favored censorship. But the Supreme Court of the United States, in a calm, judicial consideration, by a unanimous opinion, arrived at the reverse conclusions.

The development of the censorship idea, due to the necessity of some form of control, caused the passage in the Illinois Legislature of a state censorship law, which Gov. Dunne, however, vetoed July 5, 1915, for the following stated reasons:

“If this bill becomes a law it would mean double taxation upon those engaged in the motion picture business in the City of Chicago.

“Further, I can find no genuine demand for such a law in this state.

“In my opinion, such a law is unwise and unnecessary, and I accordingly veto the same.”

If the state law would not supersede the Chicago law, which is not here decided, the first point is well taken. The second point is countered by the very fact of passage of the bill in both houses of the Legislature, notwithstanding the constant powerful opposition of the lobby of the motion picture industry and allied interests. As to the third point, let us merely say that the sentiment in favor of censorship is growing stronger.

A bill for state censorship of motion pictures passed the New York Legislature in 1916 known as

the Christman-Wheeler bill. Unfortunately, that bill contained an exorbitant taxation of the films and contained other technical weaknesses. Gov. Whitman vetoed it for two reasons—oppressive taxation and technical weaknesses of the bill. Every film was to be taxed \$10.00 and every duplicate \$5.00. This was of course, an unjust taxation. Among other things, Gov. Whitman said:

“It is stated by the industry, and I believe it to be a fact, that the burden imposed by this bill in respect to the tax on the producers and lessors of these films would be so great as to close many of the places of exhibition.

“My second and most important objection to the form of the bill is that provision which permits the State Board of Regents to review the acts of the Board of Censors when the latter approve a film, but does not permit a review by the Regents when the Censors reject a film.”

These objections are well founded—oppressive features ought not to be tolerated in a censorship law. I can not now verify a report that Gov. Whitman also referred to the likelihood of Congressional action to control the situation.

The purpose of the Federal Motion Picture Commission bill of the National Congress was stated in section 4 of the bill:

“That the Commission shall promptly license for interstate and foreign commerce every motion picture film submitted to it as herein required, unless such film or a part thereof is obscene, indecent, immoral, inhuman or is a reproduction of an actual bull fight or prize fight,

or is of such a character that its exhibition would tend to corrupt morals or incite to crime.”

A Federal Motion Picture Commission bill which would have excluded films of that character from interstate commerce and therefore remedied the maximum part of the present evils in the motion picture industry, was recommended for passage by a unanimous report of the Committee on Education of the Second Session of the Sixty-third Congress, 1914.

In the Sixty-fourth Congress, the Federal Motion Picture Commission bill was again recommended for passage by the Committee on Education. A minority of four members out of fifteen joined in a minority report against the passage of the bill.

We will state the main objections urged by the minority and then add a brief comment.

On May 22, 1916, on the Federal Motion Picture Commission bill the views of the minority of the Committee on Education were presented to the House. This minority report states, among other things:

“At the hearings before the committee practically no real evidence was introduced tending to show that any significant proportion of the motion picture films now being exhibited in the United States are objectionable” (page 1).

COMMENT: The majority report fully disposes of this contention. The petition of the producers themselves already referred to in this lecture disposes of this contention. The hearings themselves before

the committee fully dispose of this contention. The support given to the bill by the leading moral and religious organizations of the country dispose of this contention.

“Such productions (immoral productions), however, are already prohibited by the laws of the several states, and their transportation from state to state is also prohibited by Federal statute under severe penalties” (page 2).

COMMENT: In the day of telegraph, telephone, railroad and wireless, the delays of courts make the application of ancient remedies to modern conditions practically useless. Hence, for obvious reasons, the present laws against immoral productions of themselves are practically dead letters.

“Moreover, there was no evidence whatever before the committee that local regulation of the exhibition of motion picture films has proved ineffective where it has been tried” (page 2).

COMMENT: It is absurd to expect prosecution to be effective, if one copy out of ten to fifty different copies of the same film causes a prosecution in one state, while the remainder in other states escapes prosecution.

“In short, this bill violates the principle of the constitutional guaranty of a free press” (page 5).

COMMENT: See *Mutual Film Corp. v. Ind. Commission of Ohio*, 236 U. S. 230, to the contrary.

Other citations could be made from the said minor-



ity report. The above are believed to be the most important.

The report of the majority of the Committee on Education on the Federal Motion Picture Commission bill covers the points with which we have now become familiar and recommends a censorship by authority of the National Government.

(The majority report in full will be found in the Addenda, p. 52.)

Some extracts from the "hearings" had in Congress on this bill furnish valuable information as to the position of some of the opponents in the consideration of this question. In the hearings before the committee of the Sixty-fourth Congress, 1916, in the consideration of the Federal Motion Picture Commission bill, we find the following:

From Statement of Mr. Binder, executive secretary of Motion Picture Board of Trade (page 17):

Mr. Fess (of the Committee): Would not that (the) objection be against all censoring?

Mr. Binder: Absolutely. A man who will censor, who will prevent me from saying anything that is in my mind before I say it, is a censor, and that would apply to everything.

Mr. Fess: Then would you object to the National Board?

Mr. Binder: The National Board of Censorship is no more a censorship body, in the strict adherence to the term, than you are. A censor who has not the power to put his foot down upon any passage which he wishes to have deleted and take it out or let it stand for all time is no censor.

Mr. Sears: Then why is it that there is stamped

on the pictures, "Passed by the National Board of Censorship"?"

Mr. Binder: That is a misnomer.

From same (pages 18 and 19):

Mr. Towner (of the Committee): Now, that being the case, you are in reality demanding the right to send any picture that any film manufacturer in the United States desires into any community in the United States. Is that true?

Mr. Binder: That is absolutely true, so far as censorship is concerned.

Mr. Towner: Then any vile combination of people who desired to do so could manufacture films and send them without any restrictions, without any examination, anywhere, if they could find a moving picture show to exhibit them so that they could be placed on the screen before these audiences of children. Is that true?

Mr. Binder: That is true, so far as censorship is concerned.

From same (pp. 19 and 20):

Mr. Binder: I say that as between the curtailment of freedom of thought, that great principle which has made America great, and the showing of less than one-tenth of 1 per cent of publications that are objectionable, I say, show the pictures that are objectionable, rather than sacrifice American freedom of speech.

From Statement of Mr. Powers, Treasurer Universal Film Manufacturing Company (page 23):

Mr. P. A. Powers: I am a manufacturer. May I say a word upon this question? I have been in the business for ten or twelve years, and I heard

Mr. Crafts say that the National Board was asked to censor our films. My recollection or knowledge of the National Board of Censors is that they are a nice lot of people who wished themselves into a job down there. They came around to our projecting room and they said, 'We would like to see your pictures'. Finally they came and saw what good work we were doing in passing upon our pictures, and finally they asked us for a contribution after they had been passing on the pictures, and thinking that they were doing good work was the only reason that they ever got a dollar from us; not that we needed them, because we were perfectly willing to censor our own products. You can not afford to make an immoral or bad picture in this business.

From same (p. 23):

Mr. P. A. Powers: I say the National Board has not done us any good. We are good without the National Board.

From (p. 49):

The Chairman: In other words, if all men were good Christians we would not need any law?

Dr. Brenton: Oh, not at all.

Mr. Fess: Let us see whether we have precisely your position. You say that moral authority is stronger than legal enactments, because the former rests upon mutual agreement?

Dr. Brenton: Yes, sir.

Mr. Fess: If that be true, why do not we eliminate all laws?

From Statement of Mr. Erwin, general manager of V. L. S. E., New York (p. 50):

I feel that the motion picture industry owes not only to itself but to the public to see to it that the American people do not step backward into the darkness of the Middle Ages and the consequent tyranny.

No comment is necessary.

And in the "Briefs and Statements" filed with the Committee on Education, 1916, we have the following (page 48):

\* \* \* "Finally, we say, let there be a cessation of governmental interference with the duties and obligations of parents. The responsibility for the welfare of the child rests primarily with the parents, and that responsibility can not successfully be assumed by Congress, nor can the burden be taken from the shoulders of the parents and placed upon those of any branch of the Government.

"For all the reasons given, we respectfully urge the defeat of the bill."

Submitted by Motion Picture Board of Trade of America (Inc.), 18 East Forty-first street, New York City. William M. Seabury of the New York Bar, General Counsel. Jan. 26, 1916.

I also have here a collection of some editorials assembled and shown in the "Briefs and Statements" of the year 1916 filed with the Committee of Congress considering the National Motion Picture Commission bill (pp. 18-25). Those who are interested in an hour's entertainment can read these editorials and see how little some of the editorial writers know of the facts in the case, or how little acquainted they are with the admission made by the producers themselves,

or how little they care for the inadequacy of ancient laws when applied to modern conditions.

Now we reach the second point under consideration under the head of Censorship.

### **National Board of Censorship Now Called National Board of Review.**

Now, what of the National Board of Censorship (now called National Board of Review)? I have referred briefly to the outcry against evil pictures in New York City. As a result of that outcry the National Board of Censorship was created by the producers themselves. This board then divided itself into various committees to inspect the pictures and indicate the parts to be eliminated. They did condemn some reels and subjects and parts of others. But, for the reasons which subsequently appeared, the board proved inefficient to cope adequately with the filthy films. That board, however, did place upon the films, which they supposedly had viewed, a stamp, "Passed by the National Board of Censorship." Then, when their work proved inefficient, and the legal censors everywhere were compelled to altogether disregard the findings of the National Board of Censorship, so far as the stamp might be an indication of the condition of the film, the said so-called National Board, through its officers, spent a goodly part of their time in running about the country, fighting legal censorship of the motion picture business. When this inconsistency became too glaring and obtrusive, the said board changed its name to that of the "National Board of Review". Those who are interested in this work can find very



interesting information in the "Hearings" before the Committee on Education of the House of Representatives of the year 1916. I should like to read from page 155 of that same year's hearing:

From Statement of Mr. Wm. S. Chase (an advocate of censorship), page 155:

Mr. Powers (of the Committee): You have made a statement that the manufacturers of these films now do the censoring of the films?

Dr. Chase: Yes, sir.

Mr. Powers: It has been brought out here in these hearings, and last year, too, that these 225 men that do this censoring up there for this New York censorship receive no salaries at all.

Dr. Chase: I do not consider those men to be censors; that is a fake.

And also from Statement of Dr. Wm. S. Chase (page 161):

Dr. Chase: \* \* \* There is one point that I did not finish. I did not finish the story about the lady who saw several different reproductions of the films exhibited with the scenes that had been ordered to be eliminated by the Board of Censorship. She went to the secretary of the National Board of Censorship and said: "They are showing the very scenes that we condemned." He said: "That can not be; that must be your imagination." And then she went around and saw the picture at four different places after that exhibited with these same objectionable parts in. Then she wrote the film company that produced it and said: "These scenes were ordered out, yet I have seen them exhibited." And they wrote back and said: "It can not be so, because we can show you that it is not so." And she said: "Could I believe my own eyes at

four different places, or take the word of the film company.”

But to prove that the National Board of Censorship has been inadequate, I need only to read to you from their recent published statements. I have a great deal of matter here, but I am going to eliminate most of it in the interest of brevity. Here, then, is the published pamphlet of the National Board of Review of Motion Pictures, January 19, 1917, being the Standards of the National Board of Review of Motion Pictures.

On page 15 you will find the following standard, No. 26:

“No. 26; Nudity: The National Board recognizes that there is nothing innately harmful or suggestive in nudity. Custom and prudery, however, have reared a taboo against its display. No logical and satisfying reasons can be given against its use under natural conditions and surroundings. Such is the traditional and emotional opposition, nevertheless, that its use in motion pictures should not be undertaken for the present. A number of pictures showing the female nude have been either passed by the National Board or referred directly to public opinion. From investigation in regard to these pictures after their release the National Board has learned that the public’s reaction has consistently been one of condemnation of such films and therefore the National Board, as a reflector of public opinion, has seen fit to take the position that it should not and will not pass any pictures containing incidentally or extensively the female nude, dating from January 1, 1917.”

And on the same page, standard No. 27:

“No. 27; Films Dealing With the Social Evil. The only justification for the portrayal of the social evil by motion pictures is that they shall be educational. By reason of the lack of dialogue and the necessity of emphasis on the dramatic, the motion picture is a difficult medium for this form of education. The National Board agrees, moreover, that education in the normal and abnormal facts of sex is fraught with danger and must be handled with tact and delicacy and must also be given under the right surroundings to be effective.

“A number of motion pictures, purely dramatic or purporting to be educational, dealing with ‘white slavery’ as a theme, have from time to time been produced. Some of these the National Board has passed; others it has not passed. On those pictures given to the general public a great deal of criticism has fallen. Within the past year this criticism has crystallized into well-defined public opinion. This opinion, wherever expressed, has been against the further production of entertainment films dealing with ‘white slavery’. A query to exhibitors throughout the country inquiring as to their patrons’ attitude toward ‘white slave’ films, brought forth the information that exhibitors are convinced that a great majority of their patrons are entirely opposed to this type of picture. This information corroborates the testimony of newspaper clippings, letters and official communications constantly reaching the board.

“In the face of this public repudiation of such pictures, the National Board, as an agent of public opinion, has taken the position that no picture hereafter will be passed by the National Board which is concerned wholly with the com-

mercialized theme of 'white slavery' or which is so advertised as to give the impression that it is a 'white slave' picture.

"This action, however, does not apply to propaganda pictures produced obviously for social betterment and exhibited in a way compatible with that purpose. It is the opinion of those who have worked most widely and skillfully on the problem of prostitution in all its phases that the most fruitful line of procedure is in the region of prevention. The National Board will not attempt to interfere with such films as are produced to be accompanied by lectures or handled by societies for the prevention of crime, and which present the facts of commercialized or *sub rosa* prostitution in a sincere, clinical manner looking toward repression or removal of its causes. The board reserve, however, the right to catalogue for itself what pictures legitimately do this and what pictures do not, and will always be governed in this decision by the fact as to whether such a picture is to be shown to special audiences or to be placed as a commercial proposition in regular motion picture theaters."

Standard No. 15 is a practical admission that the "National Board of Censorship", now called "National Board of Review", has passed to the public films that may be denominated as nudity films. That the said "Board" would go to the extent of in effect scolding and reproving the public for not rising above "custom and prudery", and that it speaks of itself as a "reflector" of public opinion is conclusive as to its inefficiency.

Standard No. 27 also gives us valuable information

that the outcry of the public compelled the "Board" to revise its standard.

How are the expenses of this voluntary so-called "National Board of Review" met? In the "Hearings before the Committee on Education, Sixty-third Congress, Second Session 1914, on the Motion Picture Commission bill," we have the admission of Dr. Howe, then chairman of the National Board of Censorship, as follows (page 68):

"The Chairman of the Committee: The manufacturers have not objected to your censorship, have they?

Dr. Howe: Ninety-five, ninety-seven or ninety-eight per cent; nobody knows exactly; but all of the organized manufacturers do approve of the censorship; yes. There is a small percentage——

The Chairman (interposing): About 2 per cent, I believe.

Dr. Howe: Yes, that come in sometimes, and sometimes they do not.

The Chairman: Is there any expense attached to this?

Dr. Howe: There is an expense of about \$15,000 a year.

The Chairman: How is that expense met?

Dr. Howe: That expense at this time is met by the producing companies.

The Chairman: That would indicate their approval of censorship?

Dr. Howe: Yes, sir."

In the hearings before the same committee, 1916, we have the following:

From Statement of Dr. Crafts, of Washington, D. C., Supt. International Reform Bureau (page 68):



“But there is another group of people in the National Board of Censorship, as I have before shown, a group whose salaries are paid by the motion picture interests which originated this board, as has been stated in their own documents. I do not blame the motion picture producers for the intelligent self-interest and consideration for public opinion shown by them in establishing such a censorship, nor do I blame them for supporting it when others fail. I blame the salaried ‘staff’ for fighting all censorship but their own, and then claiming to be impartial. These salaried men go through the whole country. They do not simply censor pictures in New York. They fight censorships in the cities and in the states. They send out great quantities of literature to defeat all official censorships. I think it a very curious position that we should be asked to believe that a censor board whose spokesmen have admitted in previous hearings that about all its financial support comes from the motion picture interests are an impartial body. This is what the National Board of Censorship says in its own latest booklets:

‘A large share of the contributions received by the People’s Institute for the board’s work has been from business interests either actual film producers or others interested in the motion picture field.’ ”

In the pamphlet entitled “The National Board of Review of Motion Pictures”, report from January 1, 1915, to January 1, 1916, we have on page 20 the following:

“It was felt from the beginning that, as the work of the National Board was beneficial not only to the public, but to the film interests in

particular, as a protective measure against those few producers who might not hesitate to market the pictures of a questionable character to the detriment of all concerned, it was perfectly proper that they should contribute financially to the board's support. Accordingly, a large share of the contributions received by the People's Institute for the board's work has been from business interests, either from actual film producers or from others interested in the motion picture field. In addition to such subscriptions, the board has established a list of sustaining members who contribute a fixed sum annually.

"All subscriptions to the work of the National Board are made to a finance committee of five members of the general committee, elected annually and charged with the entire regulation of income. Expenditures are made at the direction of the executive committee. The accounts are audited monthly."

The receipts from "trade interests" and from National Board membership subscriptions are not divided. Total, \$27,315.32. (See page 21.)

It is apparent, then, from what has been considered, that the "National Board of Review" is ineffective, because:

- (1) It is not official.
- (2) It can not enforce its decisions.
- (3) It can not enforce presentation of films.
- (4) The expenses are paid altogether or in the main by the producers affected.
- (5) It has passed too many nudity films and other objectionable films and scolds the public for its prudery.
- (6) Its standards and operations have been indulgent to the producers.

We come now to consider the third point under the head of Censorship, namely: Is a censorship law constitutional?

### **Is a Censorship Law Constitutional?**

The Supreme Court of the United States has decided, that the post office is not compelled to wait until a court has declared a book to be immoral before it can exclude the book from the mails. If the official condemns the morality of a paper which the publisher wants to send through the mails, the public welfare requires that he shall prove its good character in the courts by an appeal from the decision of the post office authorities.

When the postal authorities have evidence satisfactory to them that a fraud has been and is continuing to be committed by the unlawful use of the mail it has power to prevent the delivery of such mail.

Inspection of impure food, infected cattle, dead or alive, and condemnation thereof, is nothing whatever else than the prevention of the commission of the offense of selling impure food or of selling infected cattle, dead or alive, and is the same thing as pre-publicity inspection.

There are a number of cities in the United States that have censorship laws affecting motion pictures, the most notable being Chicago, which is the pioneer. At the present time the following states have censorship laws:

Ohio.

Kansas.

Pennsylvania.

Maryland.

Canada has official censorship of motion pictures established since the early part of 1912.

The number of cities and states exercising legal censorship of motion pictures is constantly growing. In no city or state where it has been tried has it been abandoned.

### **Chicago, Illinois.**

The case of *Block et al. v. City of Chicago* was originally filed in the Superior Court of Cook County to enjoin the City of Chicago from enforcing the Chicago ordinance providing for censorship of motion pictures. The city filed a demurrer to the petition for an injunction and the demurrer was sustained, the Court holding that there was no merit in the suit filed. On appeal to the Supreme Court of Illinois, the question of the constitutionality, along with the other points, came to be considered by the Supreme Court of Illinois. The decision of the lower court was affirmed by the unanimous opinion of all the Judges.

*Block v. City of Chicago*, 239 Ill. 251 (Feb. 19, 1909).

Again the Chicago ordinance was put to the test as to its constitutionality in the Federal Court. The Mutual Film Corporation and others filed a bill in the District Court of the United States for the Eastern Division of the Northern District of Illinois to declare said ordinance void and asked for an injunction. But the District Court held the ordinance valid. On appeal to the United States Circuit Court of Appeals, the decision of the District Court was

sustained, the Court's opinion being unanimous and referring to the United States Supreme Court opinion as holding that "all such ordinances and statutes were valid".

Mutual Film Corp. v. Chicago, 224 Federal Reporter 101 (May 20, 1915).

### Ohio.

The rigid Ohio motion picture state censorship law was first tested in the United States District Court, N. D. of E. D., Ohio, in the case of Mutual Film Corporation v. Industrial Commission of Ohio. The decision was rendered April 2, 1914, on an elaborate consideration of the constitutionality of that act. The constitutionality was sustained, three Judges sitting in the several cases.

Mutual Film Corp. v. Industrial Com. of Ohio, 215 Fed. Rep. 138.

This case was appealed to the United States Supreme Court and there the decision of the lower court was sustained. The decision of the Supreme Court of the United States was unanimous. Justice McKenna delivered the opinion of the Court. In the briefest possible words, the decision is to the effect that the censorship of motion pictures is not in violation either of the Federal Constitution or of the Constitution of the State of Ohio, either as depriving the owners of motion pictures of their property without due process of law, or as a burden on interstate commerce, or as abridging the freedom and liberty



of speech and opinion, or as delegating legislative authority to administrative officials.

Mutual Film Corp. v. Industrial Com. of Ohio,  
236 U. S. 230 (Feb. 23, 1915).

(Opinion in full is found in the Addenda, p. 58.)

### **Kansas.**

The Kansas motion picture state censorship law was upheld as constitutional in the District Court of the United States for the District of Kansas, where the case was first brought. On appeal to the United States Supreme Court, this decision was upheld and affirmed by unanimous opinion of the Supreme Court, Justice McKenna delivering the opinion of the Court.

Mutual Film Corp. of Missouri v. Hodges,  
Governor of Kansas, 236 U. S. 248 (Feb.  
23, 1915).

### **Pennsylvania.**

The Act of June 19, 1911, of Pennsylvania, providing for appointment of a State Board of Censors of Picture Films, was tested in several suits brought in the Court of Common Pleas of Philadelphia. The plea was that the statute was unconstitutional and that the officials should be restrained from enforcing the law.

In the Court of Common Pleas the question was weighed by a full bench of three Judges, which upheld the constitutionality of the act. The Court of Common Pleas delivered an elaborate opinion considering a vast array of cases, touching all the legal

points that had been made, and reached the conclusion as above.

On appeal to the Superior Court of Pennsylvania, the decision of the lower court was sustained.

Buffalo Branch Mutual Film Corp. v. Breitinger (95A 433), 250 Pa. 225 (July 3, 1915).

### **Congressional Power.**

An interesting question came up on an attempt to import into the United States a prize fight film. The Act of Congress of July 31, 1912, Sec. 1, Chap. 263, 37 Stat. 240, makes it unlawful "to bring or cause to be brought into the United States from abroad, any film or other pictorial representation of any prize fight or encounter of pugilists, under whatever name, which is designed to be used or may be used for purposes of public exhibition".

The case went up to the Supreme Court of the United States on an appeal from the Federal Court of the Newark, N. J., District. The Supreme Court by unanimous opinion held as follows:

"That the power of Congress over foreign commerce is complete is so thoroughly settled by former decisions of this Court, that to question it is frivolous."

Congress has power to prohibit importation of foreign articles from abroad, including pictorial representations of prize fights designed for public exhibition, and so held that the Act of July 31, 1912, prohibiting such importation, is not unconstitutional.

The fact that exhibitions of pictures are under state and not federal control does not affect the power of

Congress to prohibit importation of articles from foreign countries to be exhibited.

The motive of Congress in exerting its plenary power can not be considered for the purpose of refusing to give effect to such power when exercised.

Weber v. Freed, Deputy Coll., 239 U. S. 325;  
Chief Justice White delivered the opinion,  
Dec., 1915.

The Act of July 31, 1912, referred to in the above case, was supplemented by Act of Congress of October 3, 1913, which imposed a duty on "photo film negatives in any form," provided, however, that all photograph films imported under this section should be subject to such censorship as may be imposed by the Secretary of the Treasury.

The Kalisthenic Exhibition Company sought to bring in a negative film of a prize fight on the ground that the Act of October 3, 1913, prohibited only positive films, but this claim was denied, and the Court held that the Act of October 3, 1913, barred importation except subject to censorship by the Secretary of the Treasury, and that as the Secretary of the Treasury had imposed no censorship and had made no provision for censorship of films that were barred, "it is plain that the film in any form, whether positive or negative, is barred until there has been some positive action on the part of the Treasury Department to regulate its use in some manner which the public morals justify and support.

This case went up on appeal from the United States

District Court of Maine to the Circuit Court of Appeals of the First Circuit.

See *Kalisthenic Exhibition Co. v. Emmons, Collector*, 229 Fed. Rep. 124.

And the power of Congress to regulate interstate commerce can not seriously be questioned.

The power of Congress to provide a censorship of motion pictures in the exercise of its jurisdiction over interstate commerce is as ample as its power relative to importation of films from foreign countries or respecting censorship of foreign films.

So far as concerns the law of the case, we may make this summary statement:

No ordinance anywhere in the country, providing for a censorship of motion pictures, so as to exclude an immoral or indecent film or immoral or indecent parts of same has been held unconstitutional, but every such ordinance tested in the courts has been sustained.

No censorship law passed by any state has been held unconstitutional or illegal, and every such law tested in the courts has been sustained.

The congressional power over the subject is ample and where tested has been sustained.

In every case in this country, without any exception, by any court and every court that has passed upon the question, when the question was presented to it, the legality of censorship to this date has always been sustained, and to this date there never has been a decision reported by any judge or court in this country to the contrary.

A censorship law passed by Congress will do away with the maximum part of the evil. But it must be remembered that it is as easy to make “inserts” into a film as to make “cut-outs”. To have the evil overcome, national censorship should be supplemented by local or state censorship, at least in the more populous states. This for the reason, that after the interstate transportation of a film has been completed, the film is no longer subject to the national jurisdiction. It is easy to see how the object of national censorship could then be entirely frustrated. While the film is in transportation, of course it is not being exhibited, and as soon as exhibited it is no longer subject to the national jurisdiction. The existence of local or state censorship will eliminate the temptation to circumvent the purpose of the national law upon the subject. The state or local censorship will take care, as it must take care, of those films produced within the state, and not intended perhaps to be exhibited out of the state. A state or local censorship should apply to those films to which a federal censorship can not or will not apply. The number of films now held in the various states is enormous. If held therein no federal censorship law could apply to them.

We come now to consider the final point under the head of Censorship.

### **Operation of Censorship Laws.**

As to the operation of the censorship laws, I have here a report from the Chicago Department of Police, a report from the State of Kansas as to the practical working of their censorship law, and from the State of Ohio.



The following is a brief summary of the work performed by the Ohio Board of Censors during the period from November 16, 1914, to June 30, 1915:

Reels censored . . . .	17,693	100.00%
Reels approved . . . .	16,971	95.92%
Reels rejected . . . . .	722 17,693	4.08% 100.00%
<hr/>		
Reels approved with eliminations . . . . .	4,725	26.71%
Reels approved with- out eliminations. . . . .	12,246 16,971	69.21%
<hr/>		95.92

See Bulletin of The Industrial Commission of Ohio, Vol. III, No. 5, June 1, 1916, page 42.

I have here a report of the Pennsylvania State Board of Censors, 1916, which contains a statement of the actual workings and operations of the Pennsylvania State Board of Censors as required by the Pennsylvania law:

“After a film depicting a story or comedy is produced by the manufacturer it is sent to the distributing agency or what is known as the Exchange (except the greater portion of the feature films, comprising two reels or more, which are usually controlled by the film companies); an application for the examination of the film for censoring is prepared in which application they state the title of the film, the name of the manufacturer, the name of the exchange, the length of the reels, the number of parts, the number of duplicates or prints, a description of the story, the style (whether comedy or drama), date when it was manufactured, date when it is to be re-

leased, the lesson or moral to be taught by the story, the names of the leading characters (male or female), which application is sent to the Board at Philadelphia with a fee therefor at least one week before the date for the release of the film and after proper record is made and the state number is marked thereon, the application is sent to the projection rooms of the Board to await the delivery of the reels to be examined, which reels are to be delivered at least three days before release date.

“When the film is received it is projected upon the screen by the censor in charge, who makes the necessary eliminations or changes consistent with the act and standards fixed by the Board. If eliminations or changes are suggested, the applicant receives immediate notice thereof, and when satisfied that such eliminations or changes are proper and necessary, the applicant agrees thereto by signing the elimination sheet, when the official stamp of approval (consisting of approximately four feet of film) is attached to the reel by the Board, on which appears the title of the film, when the reel is ready for exhibition to the public. Subsequently the applicant receives a printed certificate of approval of the reel by the Board. If the eliminations or changes suggested by the Board are not agreed to by the applicant he is permitted to file, within ten days, a request for re-examination, when the film is reviewed in his presence by at least two members of the Board, and the suggested eliminations or changes are discussed with a view to carrying out the intent of the act and to properly portray the story. If, after such re-examination, the eliminations or changes are still not agreed to by the applicant, he is permitted to take an appeal to

the Court of Common Pleas of the proper county.”

The said report is further interesting in the following particulars:

“The Board physically examined 17,020 reels, averaging one thousand feet each, or 17,020,000 lineal feet. The number of duplicate reels certified to from December 1, 1915, to November 30, 1916, is 28,412, or 28,412,000 lineal feet, making in all 45,432,000 lineal feet of motion picture film released for use in the confines of the Commonwealth for the period beginning December 1, 1915, ending November 30, 1916.”

See p. 5 of said Report.

A detailed statement of all examination of films for each month is then set out in the report. The recapitulation contained on pages 15 and 16 shows the totals from June 1, 1915, to November 30, 1916. This recapitulation shows, among other things, that the number of eliminations made by the censors were 18,422. This means so many incidents or portions ordered eliminated from the films. Of course, in one film there may be a great many eliminations ordered, in another none may be ordered.

The report is also interesting in this: Of course, the law was attacked as we have seen. But the number of fines collected for infraction of the law during eighteen months of operation was \$9,300.00. The statement of prosecutions is interesting as showing that under censorship the law officers can proceed and accomplish something in enforcing laws against indecency. The statement of prosecutions as found on page 17 of the report shows some heavy fines im-

posed in the case of some well-known objectionable films.

The report is further interesting in this, that it shows a table of appeals taken from the decision of the Board to the courts and their disposition. This table is found on page 24 of said report and shows that of the twelve appeals three were withdrawn by the appellants and in nine cases the appeal was dismissed and the Board sustained.

Now, let me give you an idea of the extent to which these producers sometimes dare to go and the efficacy of censorship. Here is a film production which I will not identify by name. Its name is the reverse of what the film portrays. What I will have to say of it I shall endeavor to say in discreet words. The alleged purpose of the film was indicated by the producer by a title or legend to be flashed on the screen as follows: "The play which is about to be presented to you is called a morality play because its purpose is to demonstrate an impressive moral truth, a truth uttered by the great Apostle Paul: 'Unto the pure, all things are pure.' " The Pennsylvania Board of Censors ordered that this title be eliminated. Then followed a great number of detailed eliminations ordered by the same Board so as to exclude the showing on the screen of picture after picture of nudities taken from art galleries. The film then proposed to show living women in scenes of nudity. All these parts were ordered eliminated. Now, this was a film for public exhibition and called a morality play. There are a number of the same character and many imitators. You can readily understand this from the very standard No. 26 which I have read to you of the

National Board of Review, admitting the passage heretofore of such films and in effect scolding the public for being prudish and adhering to "custom".

We must conclude then, that there is a necessity and a continued necessity for effective elimination of the evil in the motion picture field. The only effective elimination is censorship under the law, and such censorship is constitutional.

In conclusion, let this be plainly understood. Those who know the existence of this evil in the motion picture industry and who frankly admit its existence, are acquainted with the immense possibilities for good in that industry and fully recognize the fact. It is they who value the industry higher than do those who deny the existence of the evil and who are resisting the application of efficient methods to secure the elimination of the evil. Thus the Pennsylvania Board of Censors has sent out a list of films which have educational or scientific value. This list was tabulated by the Board on account of the frequent appeals received by it to recommend films of that character. You can readily see that this information going through the State of Pennsylvania is of the utmost value to those who recognize the immense educational benefits, as well as the social benefits of the "movies".

I deem it a duty therefore, that each one of us earnestly co-operate in the movement for the efficient exclusion of the evil, in order that the good may have the greater course, and so that the benefits, which undoubtedly are derivable from the motion picture industry, may be increased.



## **ADDENDA**

### **MAJORITY REPORT OF THE COMMITTEE ON EDUCATION OF THE HOUSE OF REPRESENTATIVES.**

House of Representatives, 64th Congress.

1st Session.

Report No. 697.

#### **Federal Motion Picture Commission.**

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May 17th, 1916.—Committed to the Committee of the  
Whole House on the state of the Union  
and ordered to be printed.

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Mr. Hughes, from the Committee on Education, sub-  
mitted the following

#### **REPORT.**

[To accompany H. R. 15462.]

The Committee on Education, to whom was referred H. R. 15462, have considered the same and submit the following report, with the recommendation of the committee that the bill do pass:

The necessity for regulation of motion pictures is apparent. It has been acknowledged by a large majority of the film manufacturers by their voluntary submission of their films to unofficial boards for approval. That the public demands this regulation is demonstrated by the scrupulous regularity with

which the producers exhibit such approval at the end of each picture.

The vicious picture brings the larger return to exhibitor and producer, because it gets the money of the regular customer and the sensation seeker also. This state of affairs constitutes a temptation hard to resist, and, in fact, the production of vicious pictures is constantly increasing just because they are more profitable. If the industry is to endure, if decent people are to stay in the business, this cancer must be cut out. A Federal regulatory commission should prove a fearless surgeon, and we therefore favor such a commission.

This statement of conditions is made in the brief filed with the committee by the legal representatives of four of the ten manufacturers who produce 90 per cent of the motion pictures in the United States, and by the legal representatives of one of the largest distributors of motion pictures in this country. The brief in full accompanies this report.

This bill has the earnest support of the leading moral and religious organizations of the nation. A similar bill was unanimously reported to the House from this committee in the last Congress.

With the acknowledgement of the need of regulation both by the motion picture interests and the public they serve, the question arises as to what shall be the regulation and who shall do the regulating. The National Board of Review at New York City is composed of representatives of various moral and civic organizations. The expenses of this board are paid by some of the leading motion picture interests, and it has no legal authority. At the request of the manufacturers, this board passes upon the

pictures. It is estimated that more than 95 per cent of all pictures produced in this country are passed upon by this unofficial board.

In addition to this voluntary board there are numerous official censors, both state and municipal. The establishment of such large numbers of these local boards, which are rapidly increasing, clearly demonstrates the inadequacy of the so-called National Board of Review, which by its very unofficial character can not exercise effective supervision. Though it were to exercise a careful and intelligent supervision over 95 per cent of all pictures, still there would remain 5 per cent which could be immoral and unfit to be shown. It is only fair to assume that those pictures which are most objectionable will not voluntarily be submitted for review. An unofficial board which has not the right to examine 100 per cent of the pictures is in reality not a board of regulation, but a board of recommendation and approval. As a matter of fact, evidence before the committee discloses that a very considerable percentage of the pictures approved by the unofficial board are declared by the local boards unfit for exhibition. The decision of the National Board of Review is not binding. Pictures which have been disapproved by it are shown to the public.

The character of the motion picture industry renders state and municipal regulation inadequate. Motion picture films are essentially articles of interstate commerce. They are not manufactured for use in any one state or municipality, but practically every picture is exhibited in all of the states of the Union. Innumerable inspections by local boards work great hardships on the industry. In the absence of any

official Federal regulation the states and cities are finding it necessary to establish these local boards to prevent the exhibition of immoral, indecent and obscene pictures. The only adequate method of regulating motion pictures is to be had in a Federal commission, and the establishment of such a commission is the one way to obviate the necessity for innumerable local boards.

The bill which this report accompanies provides for the appointment by the President of five commissioners, and a supplementary force of deputy commissioners to be appointed by the commission. The commission is required to license each film intended for interstate commerce unless it finds that such film, or a part thereof, is obscene, indecent, immoral, inhuman, or is a reproduction of an actual bull fight or prize fight, or is of such a character that its exhibition would tend to corrupt morals or incite crime.

The main offices of the commission are to be at Washington, but the commission is granted authority to establish branch offices where necessary. Each branch office is to be in charge of one of the commissioners or a deputy who is clothed with the power of a commissioner. Licenses may be issued by this commissioner or deputy commissioner at such branch office. Should he render an adverse decision on the film, the producer has the right to appeal to the full commission, and in all cases the producer can appeal from decisions of the commission to the Court of Appeals of the District of Columbia.

The commission is authorized to issue licenses for pictures which are to be shown only to people over 16 years of age.

It is provided that a film not having been licensed by the commission shall not be transported in interstate commerce. The exhibition of unlicensed pictures at places of amusement for pay in the District of Columbia or in any of the territories of the United States, or any place where the local police power is in the jurisdiction of the Federal Government, is prohibited. The penalty for a violation of this act is a fine of not more than \$1,000 or imprisonment not more than one year, or both, and the confiscation of the films illegally transported, exhibited or changed. Motion picture films meant for use by the learned professions and not for purposes of entertainment are excepted from the operation of this bill. Films known in the industry as "news films"—those depicting current events—may be granted a permit so that they can be shown immediately after manufacture, the commission having authority to withdraw the permit when this privilege is abused. All motion picture films which are in existence at the time this act is approved shall be granted a permit to enter interstate commerce without examination.

License fees of \$2 for 1,000 feet of film for originals and 50 cents for each duplicate copy are provided in this bill. It is estimated that 200 original reels of 1,000 feet each are produced weekly in this country. The best figures obtainable indicate that an average of 25 duplicates are made of each original. The income from the original would therefore be \$400 per week or \$20,800 per annum. and from the duplicates \$2,500 per week or \$130,000 per annum. The total income is therefore estimated at \$150,800. The commission is required to revise these fees after



six months so that only an amount sufficient to bear the expenses of the commission will be collected.

In the consideration of this measure your committee, after once determining that regulation of motion pictures was a pressing necessity for the protection of the public, and particularly the children, against vicious and immoral pictures, sought to frame a bill which would meet the needs of the public and not work unnecessary hardships on the industry. The measure which your committee reports has the indorsement of leading producers of motion picture films and others engaged in the industry.

**OPINION OF THE SUPREME COURT OF THE  
UNITED STATES IN THE CASE OF MUTUAL  
FILM CORPORATION VS. INDUSTRIAL COM-  
MISSION OF OHIO, 236 U. S. 230.**

**Syllabus.**

Where provision for censorship of moving pictures relates only to films intended for exhibition within the state and they are distributed to persons within the state for exhibition, there is no burden imposed on interstate commerce.

The doctrine of original package does not extend to moving picture films transported, delivered and used as shown in the record in this case, although manufactured in, and brought from, another state.

Moving picture films brought from another state to be rented or sold by the consignee to exhibitors are in consumption and mingled as much as from their nature they can be with other property of the state and subject to its otherwise valid police regulation, even before the consignee delivers to the exhibitor.

The judicial sense, supporting the common sense of this country, sustains the exercise of the police power of regulation of moving picture exhibitions.

The exhibition of moving pictures is a business, pure and simple, originated and conducted for profit like to the spectacles and not to be regarded as part of the press of the country or as organs of public opinion within the meaning of freedom of speech and publication guaranteed by the Constitution of Ohio.

This Court will not anticipate the decision of the State Court as to the application of a police statute of the state, to a state of facts not involved in the

record of the case before it. *Quaere*, Whether moving pictures exhibited in places other than places of amusement should fall within the provisions of the censorship statute of Ohio.

While administration and legislation are distinct powers and the line that separates their exercise is not easily defined, the Legislature must declare the policy of the law and fix the legal principles to control in given cases, and an administrative body may be clothed with power to ascertain facts and conditions to which such policy and principles apply.

It is impossible to exactly specify such application in every instance, and the general terms of censorship, while furnishing no exact standard of requirements, may get precision from the sense and experience of men and become certain and useful guides in reasoning and conduct.

Whether provisions in a state statute clothing a board or Congress composed of officers from that and other states with power amount to such delegation of legislative power as to render the provisions unconstitutional, will not be determined by this Court in a case in which it appears that such congress is still non-existent.

The Moving Picture Censorship Act of Ohio of 1913 is not in violation of the Federal Constitution or the Constitution of the State of Ohio, either as depriving the owners of moving pictures of their property without due process of law or as a burden on interstate commerce, or as abridging freedom and liberty of speech and opinion, or as delegating legislative authority to administrative officers.

215 Fed. Rep. 138, Affirmed.

Mr. Justice McKenna delivered the opinion of the Court as follows:

Complainant directs its argument to three propositions: (1) the statute in controversy imposes an unlawful burden on interstate commerce; (2) it violates the freedom of speech and publication guaranteed by §11, Art. I of the Constitution of the State of Ohio, and (3) it attempts to delegate legislative powers to censors and to other boards to determine whether the statute offends in the powers designated.

It is necessary to consider only §§3, 4 and 5. Sec. 3 makes it the duty of the Board to examine and censor motion picture films to be publicly exhibited and displayed in the State of Ohio. The films are required to be exhibited to the Board before they are delivered to the exhibitor for exhibition, for which a fee is charged.

Sec. 4. "Only such films as are in the judgment and discretion of the Board of Censors of a moral, educational or amusing and harmless character shall be passed and approved by such Board." The films are required to be stamped or designated in a **proper manner**.

Sec. 5. The Board may work in conjunction with censor boards of other states as a Censor Congress, and the action of such congress in approving or rejecting films shall be considered as the action of the State Board, and all films passed, approved, stamped and numbered by such congress when the fees therefor are paid shall be considered approved by the Board.

By §7 a penalty is imposed for each exhibition of films without the approval of the Board, and by §8 any person dissatisfied with the order of the Board is given the same rights and remedies for hearing and reviewing amendment or vacation of the order "as is provided in the case of per-

sons dissatisfied with the orders of the Industrial Commission''.

The censorship, therefore, is only of films intended for exhibition in Ohio; and we can immediately put to one side the contention that it imposes a burden on interstate commerce. It is true that according to the allegations of the bill some of the films of complainant are shipped from Detroit, Michigan, but they are distributed to exhibitors, purchasers, renters and lessors in Ohio, for exhibition in Ohio, and this determines the application of the statute. In other words, it is only films which are "to be publicly exhibited and displayed in the State of Ohio" which are required to be examined and censored. It would be straining the doctrine of original package to say that the films retain that form and composition even when unrolling and exhibiting to audiences, or, being ready for renting for the purpose of exhibition within the state, could not be disclosed to the state officers. If this be so, whatever the power of the state to prevent the exhibition of films not approved—and for the purpose of this contention we must assume the power is otherwise plenary—films brought from another state, and only because so brought, would be exempt from the power, and films made in the state would be subject to it. There must be some time when the films are subject to the law of the state, and necessarily when they are in the hands of the exchanges ready to be rented to exhibitors or have passed to the latter, they are in consumption, and mingled as much as from their nature they can be with other property of the state.

It is true that the statute requires them to be submitted to the Board before they are delivered to the exhibitor, but we have seen that the films



are shipped to "exchanges" and by them rented to exhibitors, and the "exchanges" are described as "nothing more or less than circulating libraries or clearing houses". And one film "serves in many theatres from day to day until it is worn out".

The next contention is that the statute violates the freedom of speech and publication guaranteed by the Ohio Constitution. In its discussion counsel have gone into a very elaborate description of moving picture exhibitions and their many useful purposes as graphic expressions of opinion and sentiments, as exponents of policies, as teachers of science and history, as useful, interesting, amusing, educational and moral. And a list of the "campaigns", as counsel call them, which may be carried on is given. We may concede the praise. It is not questioned by the Ohio statute and under its comprehensive description "campaigns" of an infinite variety may be conducted. Films of a "moral, educational or amusing and harmless character shall be passed and approved", are the words of the statute. No exhibition, therefore, or "campaign" of complainant will be prevented if its pictures have those qualities. Therefore, however missionary of opinion films are or may become, however educational or entertaining, there is no impediment to their value or effect in the Ohio statute. But they may be used for evil, and against that possibility the statute was enacted. Their power of amusement, and, it may be, education, the audiences they assemble, not of women alone nor of men alone, but together, not of adults only, but of children, make them the more insidious in corruption by a pretense of worthy purpose or if they should degenerate from worthy purpose. Indeed, we may go beyond that possibility. They take their at-

traction from the general interest, eager and wholesome it may be, in their subjects, but a prurient interest may be excited and appealed to. Besides, there are some things which should not have pictorial representation in public places and to all audiences. And not only the State of Ohio, but other states, have considered it to be in the interest of public morals and welfare to supervise moving picture exhibitions. We would have to shut our eyes to the facts of the world to regard the precaution unreasonable or the legislation to effect it a mere wanton interference with personal liberty.

We do not understand that the possibility of an evil employment of films is denied, but a freedom from the censorship of the law and a precedent right of exhibition are asserted, subsequent responsibility only, it is contended, being incurred for abuse. In other words, as we have seen, the Constitution of Ohio is invoked and an exhibition of films is assimilated to the freedom of speech, writing and publication assured by that instrument and for the abuse of which only is their responsibility, and it is insisted that as no law may be passed "to restrain the liberty of speech or of the press", no law may be passed to subject moving pictures to censorship before their exhibition.

We need not pause to dilate upon the freedom of opinion and its expression, and whether by speech, writing or printing. They are too certain to need discussion—of such conceded value as to need no supporting praise. Nor can there be any doubt of their breadth nor that their underlying safeguard is, to use the words of another, "that opinion is free and that conduct alone is amenable to the laws".

Are moving pictures within the principle, as it

is contended they are? They, indeed, may be mediums of thought, but so are many things. So is the theatre, the circus and all other shows and spectacles, and their performances may be thus brought by the like reasoning under the same immunity from repression or supervision as the public press—made the same agents of civil liberty.

Counsel have not shrunk from the extension of their contention and cite a case in this Court where the title of drama was accorded to pantomime; and such and other spectacles are said by counsel to be publications of ideas, satisfying the definition of the dictionaries—and that is, and we quote counsel, a means of making or announcing publicly something that otherwise might have remained private or unknown—and this being peculiarly the purpose and effect of moving pictures, they come directly, it is contended, under the protection of the Ohio Constitution.

The first impulse of the mind is to reject the contention. We immediately feel that the argument is wrong or strained which extends the guarantee of free opinion and speech to the multitudinous shows which are advertised on the billboards of our cities and towns and which regards them as emblems of public safety, to use the words of Lord Camden, quoted by counsel, and which seeks to bring motion pictures and other spectacles into practical and legal similitude to a free press and liberty of opinion.

The judicial sense supporting the common sense of the country is against this contention. As pointed out by the District Court, the police power is familiarly exercised in granting or withholding licenses for the theatrical performances as a means of their regulation. The Court cites the following cases: *Marnet v. State*, 45

Ohio 63, 72, 73; *Baker v. Cincinnati*, 11 Ohio St. 534; *Commonwealth v. McGann*, 213 Mass. 213, 215; *People v. Steele*, 231 Ill. 340, 344, 345.

The exercise of the power upon moving picture exhibitions has been sustained (*Greenburg v. Western Turf Assn.*, 148 Cal. 126; *Laurelle v. Bush*, 17 Cal. App. 409; *State v. Loden*, 117 Maryland 373; *Block v. Chicago*, 239 Ill. 251; *Higgins v. Lacroix*, 119 Minn. 145; see, also, *State v. Morris*, 76 Atl. Rep. 479; *People v. Gaynor*, 137 N. Y. S. 196, 199; *McKenzie v. McClellan*, 116 N. Y. S. 645, 646).

It seems not to have occurred to anybody in the cited cases that freedom of opinion was repressed in the exercise of the power which was illustrated. The rights of property were only considered as involved. It can not be put out of view that the exhibition of moving pictures is a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded, by the Ohio Constitution, we think, as part of the press of the country or as organs of public opinion. They are mere representations of events, of ideas and sentiments published and known, vivid, useful and entertaining no doubt, but, as we have said, capable of evil, having power for it, the greater cause of their attractiveness and manner of exhibition. It was this capability and power, and it may be experience of them, that induced the State of Ohio, in addition to prescribing penalties for immoral exhibitions, as it does in its criminal code, to require censorship before exhibition, as it does by the act under review. We can not regard this as beyond the power of government.

It does not militate against the strength of these considerations that motion pictures may be



used to amuse and instruct in other places than in theaters—in churches, for instance, and in Sunday schools, and public schools. Nor are we called upon to say on this record whether such exceptions would be within the provisions of the statute nor to anticipate that it will be so declared by the state courts or so enforced by the state officers.

The next contention of complainant is that the Ohio statute is a delegation of legislative power and void for that if not for the other reasons charged against it, which we have discussed. While administration and legislation are quite distinct powers, the line which separates exactly their exercise is not easy to define in words. It is best worked in illustrations. Undoubtedly the Legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done there would be infinite confusion in the laws, and in an effort to detail and particularize they would miss sufficiency both in provision and execution.

The objection to the statute is that it furnishes no standard of what is educational, moral, amusing or harmless, and hence leaves decision to arbitrary judgment, whim and caprice; or aside from these extremes leaving it to the different views which might be entertained of the effect of the pictures, permitting the "personal equation" to enter, resulting in unjust discrimination against some "propagandist film", while others might be approved without question. But the statute by its provision guards against such variant judgments, and its terms, like other general terms, get precision from the



sense and experience of men and become certain and useful guides in reasoning and conduct. The exact specification of the instances of their application would be as impossible as the attempt would be futile. Upon such sense and experience, therefore, the law properly relies. This has many analogies and direct example in cases, and we may cite *Gundling v. Chicago*, 177 U. S. 183; *Red "C" Oil Mfg. Co. v. North Carolina*, 222 U. S. 380; *Bridge Co. v. U. S.*, 216 U. S. 177; *Buttfield v. Stranahan*, 192 U. S. 470. See, also, *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86. If this were not so, the many administrative agencies created by the State and National Governments would be denuded of their utility and government in some of its most important exercises become impossible.

To sustain the attack upon the statute as a delegation of legislative power, complainant cites *Harmon v. State*, 66 Ohio St. 249. In that case a statute in the state committing to a certain officer the duty of issuing a license to one desiring to act as an engineer if "found trustworthy and competent", was declared invalid because, as the Court said, no standard was furnished by the General Assembly as to qualification and no specification as to wherein the applicant should be trustworthy and competent, but all was "left to the opinion, finding and caprice of the examiner". The case can be distinguished. Besides later cases have recognized the difficulty of exact separation of the powers of government and announced the principle that legislative power is completely exercised where the law is "perfect, final and decisive in all of its parts and the discretion given only relates to its execution". Cases are cited in illustration. And the princi-

ple finds further illustration in the decisions of the courts of lesser authority, but which exhibit the judicial sense of the state as to the delegation of powers.

Section 5 of the statute, which provides for a censor Congress of the Censor Board and the boards of other states, is referred to in emphasis of complainant's objection that the statute delegates legislative power. But, as complainant says, such Congress is "at present non-existent and nebulous", and we are, therefore, not called upon to anticipate its action or pass upon the validity of section 5.

We may close this topic with a quotation of the very apt comment of the District Court upon the statute. After remarking that the language of the statute "might have been extended by descriptive and illustrated words", but doubting that it would have been the more intelligible and that probably by being more restrictive might be more easily thwarted, the Court said: "In view of the range of subjects which complainants claim to have already compassed, not to speak of the natural development that will ensue, it would be next to impossible to devise language that would be at once comprehensive and automatic."

In conclusion, we may observe that the Ohio statute gives a review by the courts of the state of the decision of the Board of Censors. Decree affirmed.



